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**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

KMI ZEOLITE, INC.; and ROBERT E.
 FORD,

Plaintiffs,

v.

UNITED STATES DEPT. OF THE
 INTERIOR; *et al.*,

Defendants.

Case No.: 2:15-cv-2038-MMD-VCF

UNITED STATES DEPT. OF THE
 INTERIOR,

Counterclaimant,

v.

KMI ZEOLITE, INC.; ROBERT E. FORD;
 and R.A.M.M. CORP.,

Counterclaim Defendants.

STIPULATED DISCOVERY PLAN AND SCHEDULING ORDER

On February 9, 2016, counsel for the Plaintiff and the Defendants (collectively the Parties) conducted a scheduling conference. Pursuant to Fed. R. Civ. P. 26(f) and Local Rule 26-1(d), the Parties jointly submit this Stipulated Discovery Plan and Scheduling Order.

Introduction

This is an action seeking administrative review of a decision by the federal Interior Board of Land Appeals (IBLA), finding that the two plaintiffs in this case, KMI Zeolite, Inc. (KMI) and Robert Ford (Ford), committed trespass on the public lands in connection with the operation of a milling site on private land. The Federal Defendants have also filed a counterclaim in this case which joins R.A.M.M. Corp., which was also found by the IBLA to have trespassed on the public lands, as an additional Counterclaim Defendant.

The Federal Defendants have filed a motion to consolidate this action with *ABC Recycling Industries, LLC v. American Borate Co.*, No. 2:16-cv-46-JCM-PAL, on January 21, 2016 (#19). The *ABC Recycling* case is an action to quiet title to the private millsite which was used in connection with the trespasses involved in this lawsuit. The plaintiffs in this case, KMI and Ford, and the additional Counterclaim Defendant in this case, R.A.M.M. Corp., are defendants in the *ABC Recycling* case. The Federal Defendants have moved to consolidate this action with the *ABC Recycling* case because the two cases involve overlapping factual and legal issues. Plaintiffs KMI and Ford in this case have filed a non-opposition to consolidation (#22).

If the cases are consolidated, that will significantly affect the scheduling for both cases. The Parties propose that the administrative review issues be resolved first, because those issues are resolved solely by reviewing the administrative record prepared by the agency. The APA portion of the case requires no discovery, because APA review occurs solely on the administrative record developed by the agency. *Building Indus. Ass'n of the Bay Area v. U.S. Dept. of Commerce*, 792 F.3d 1027, 1032 (9th Cir. 2015). As a result, the APA issues can be resolved by cross motions for summary judgment.

While the APA issues are being resolved, the Parties request the Court to stay the preparation of initial disclosures and all other discovery on the remaining issues in these two cases. The reason

is that once the Court rules on the APA portion of the *KMI Zeolite* case, any findings of fact by the agency that the Court upholds may be entitled to receive the effect of collateral estoppel, also known as issue preclusion. *United States v. Utah Construction & Mining Co.*, 384 U.S. 394 (1966) (fact findings by administrative agency are entitled to collateral estoppel where agency was acting in a judicial capacity and resolved disputed fact issues before it which parties had adequate opportunity to litigate). The Court's ruling on the APA portion of this case may therefore significantly foreshorten the amount of discovery, if any, which will need to be taken in connection with the remaining claims in the *KMI Zeolite* and *ABC Recycling* cases.

PROPOSED SCHEDULING ORDER

The Parties propose the following schedule and related deadlines:

1. Briefing on the APA issues in the *KMI Zeolite* case shall be as follows:

Plaintiff's and Defendants' motions for summary judgment and supporting briefs due:	April 11, 2016
Briefs in response to motions for summary judgment due:	May 11, 2016
Reply briefs in support of summary judgment due:	June 10, 2016
2. Initial Disclosures due: 30 days after order disposing of APA issues in *KMI Zeolite*
3. Amendment of Pleadings due: 30 days after Initial Disclosures
4. Fact Discovery closes: 180 days after Initial Disclosures
5. **Expert Discovery:**
 - a. Last day to designate Plaintiffs' experts: 30 days after fact discovery close
 - b. Last day to designate Defendant's experts: 60 days after fact discovery close
 - c. Last day to designate rebuttal experts: 90 days after fact discovery close
 - c. Last day to complete expert discovery: 120 days after fact discovery close

6. Dispositive Motions due: 30 days after expert discovery close

7. **Pre-Trial Order:**

a. Last date to file if no dispositive motions are filed: 30 days after expert discovery close

b. Last date to file if dispositive motions are filed: 30 days after order resolving last dispositive motion

For the reasons set forth above, Plaintiff and Defendants respectfully and jointly request the Court to enter its SCHEDULING ORDER in conformity with the dates proposed herein.

Dated: February 10, 2016

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IT IS SO ORDERED.

Date: 2-11-2016


UNITED STATES MAGISTRATE JUDGE

IT IS HEREBY ORDERED that a status hearing is scheduled for 10:00 a.m., October 3, 2016, in courtroom 3D.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on the persons shown, by the method shown, on the date shown.

CM/ECF

All counsel of record

Dated: February 10, 2016

/s/ Roger W. Wenthe
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